

HOUSE BILL No. 1761

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-0.5-4; IC 24-5-24.

Synopsis: Satellite sports blackouts. Prohibits a satellite television carrier from deleting the live television broadcast of a sports event from the programming provided to a subscriber in a community not served by a cable operator, except in accordance with the federal satellite sports blackout rules. Provides that if a satellite carrier receives notice of a satellite sports blackout from the holder of the broadcast rights to the event, the carrier shall not delete the sports event from the programming provided to a subscriber located outside the relevant specified zone for the blackout (as determined under federal law), even if the subscriber lives within a ZIP code identified in the holder's notice. Prohibits a satellite carrier from deleting a sports event if the carrier has, within the relevant specified zone, fewer than 1,000 subscribers who subscribe to the: (1) nationally distributed superstation; or (2) network station; carrying the event. Provides that a knowing violation of the prohibited acts is: (1) a Class B misdemeanor; and (2) a deceptive act actionable by the attorney general. Provides that a subsequent violation is a Class A misdemeanor. Provides a cause of action for: (1) damages; and (2) injunctive relief; for a subscriber aggrieved by a violation.

Effective: Upon passage.

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January 26, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1761

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 4.(a) A person relying upon an uncured or
4 incurable deceptive act may bring an action for the damages actually
5 suffered as a consumer as a result of the deceptive act or five hundred
6 dollars (\$500), whichever is greater. The court may increase damages
7 for a willful deceptive act in an amount that does not exceed the greater
8 of:

9 (1) three (3) times the actual damages of the consumer suffering
10 the loss; or

11 (2) one thousand dollars (\$1,000).

12 Except as provided in subsection (j), the court may award reasonable
13 attorney fees to the party that prevails in an action under this
14 subsection. This subsection does not apply to a consumer transaction
15 in real property, including a claim or action involving a construction
16 defect (as defined in IC 32-27-3-1(5)) brought against a construction
17 professional (as defined in IC 32-27-3-1(4)), except for purchases of

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time shares and camping club memberships. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, ~~or~~ IC 24-5-14, **or IC 24-5-24**. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and
- (4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any

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other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may

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submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

SECTION 2. IC 24-5-24 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 24. Satellite Television Sports Blackout

Sec. 1. As used in this chapter, "holder" refers to the holder of the broadcast rights to a sports event.

Sec. 2. As used in this chapter, "nationally distributed superstation" has the meaning set forth in 47 CFR 76.120(b).

Sec. 3. As used in this chapter, "network station" has the meaning set forth in 47 CFR 76.120(d).

Sec. 4. As used in this chapter, "relevant specified zone" refers to the specified zone:

- (1) determined in accordance with 47 CFR 76.127(a); and**
- (2) within which a satellite carrier is prohibited from retransmitting to subscribers:**

(A) a nationally distributed superstation; or

(B) a network station;

carrying the live television broadcast of a sports event.

Sec. 5. As used in this chapter, "satellite carrier" has the meaning set forth in 47 CFR 76.120(a).

Sec. 6. (a) As used in this chapter, "satellite community" means a separate and distinct community or municipal entity in Indiana in which there is no preexisting cable community (as defined in 47 CFR 76.5(dd)).

(b) The term includes:

- (1) unincorporated communities within unincorporated areas;**
- or**

(2) single, discrete unincorporated areas;

the boundaries of which may be defined by one (1) or more adjacent five (5) digit ZIP code areas.

Sec. 7. As used in this chapter, "satellite sports blackout" refers to the deletion of the live television broadcast of a sports event from the programming provided to a subscriber.

Sec. 8. As used in this chapter, "specified zone", with respect to

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a television broadcast station, has the meaning set forth in 47 CFR 76.5(e).

Sec. 9. As used in this chapter, "subscriber" means a person in Indiana who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

Sec. 10. (a) A satellite carrier shall not delete the live television broadcast of a sports event from the programming provided to a subscriber in a satellite community except in accordance with the federal satellite sports blackout rules set forth in:

(1) 47 CFR 76.127; and

(2) 47 CFR 76.128.

(b) If a satellite carrier receives notification of a satellite sports blackout from a holder under 47 CFR 76.127(b), the satellite carrier shall not delete the sports event from the programming provided to an individual subscriber who is located outside the relevant specified zone, even if the subscriber lives within a ZIP code identified by the holder in the holder's notification.

(c) If a satellite carrier receives notification of a satellite sports blackout from a holder under 47 CFR 76.127(b), the satellite carrier shall not delete the sports event if the satellite carrier has, within the relevant specified zone, fewer than one thousand (1,000) subscribers who subscribe to:

(1) the nationally distributed superstation; or

(2) the network station;

carrying the sports event for which the blackout is sought.

Sec. 11. A satellite carrier that knowingly violates section 10 of this chapter commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the satellite carrier has a previous unrelated conviction under this chapter.

Sec. 12. A satellite carrier who knowingly violates this chapter commits a deceptive act that is:

(1) actionable by the attorney general under IC 24-5-0.5-4(c); and

(2) subject to the penalties set forth in IC 24-5-0.5;

to the extent permitted by federal law. An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 13. (a) To the extent permitted by federal law, a subscriber who is aggrieved by a violation of this chapter may bring an action for the recovery of the subscriber's actual damages, including court costs and attorney's fees, against the satellite carrier that

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1 committed the violation. An action under this subsection may be
2 brought in the circuit or superior court of the aggrieved
3 subscriber's county of residence.

4 (b) To the extent permitted by federal law, upon petition by a
5 subscriber that a satellite carrier has violated this chapter, the
6 circuit or superior court of the subscriber's county of residence
7 may enjoin the satellite carrier from further violations. The
8 injunctive relief available under this subsection is in addition to
9 any damages to which a subscriber may be entitled under
10 subsection (a).

11 SECTION 3. An emergency is declared for this act.

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